

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: R-220425 **DATE:** March 11, 1986
MATTER OF: Consolidated Bell, Inc.

DIGEST:

1. Agency unreasonably found protester's proposal technically unacceptable where the technical evaluation panel failed to evaluate the proposal in accordance with the solicitation provisions.
2. Agency improperly awarded a contract on the basis of initial proposals where it is not clear the contract was awarded at the lowest overall cost to the government.

Consolidated Bell, Inc. protests the award of a contract by the General Services Administration (GSA) under request for proposals (RFP) No. KFCS-85-025.

We sustain the protest.

The RFP was issued on August 12, 1985, to procure 91 IBM personal computers, model number 5170-99 or equivalent, and associated peripheral equipment, to be installed at 19 locations throughout the United States. The RFP included 12 line items, with space for entries by the offeror for each of line items 1001-1008. For example, the first line item appeared as follows:

<u>"Item</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Amount</u>
1001	IBM-PC/AT Enhanced System, (IBM #5170-99) or equal	91	EA		

Quoting on:
Manufacturer Name _____ Brand _____ Model _____ "

On September 12, the closing date for the receipt of initial proposals, GSA received 10 offers. These offers were evaluated by a technical evaluation panel, and five proposals, not including the one submitted by Bell, were considered acceptable. GSA determined that it received adequate competition and reasonable prices, and on September 30 awarded a contract based on the initial proposals.

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The evaluation panel found Bell's proposal unacceptable because Bell did not include model numbers for line items 1001-1008 (Bell only repeated the brand names); did not insert a manufacturer's name or model number for line item 1004; inserted "NB," which the panel assumed meant "no bid," in the first space under line items 1007 and 1008; and did not address line items 1009 (operator manuals) and 1010 (cabling). Bell essentially contends that it obviously was offering the brand name models for all of items 1001-1008. The firm also questions, with respect to items 1007 and 1008, how GSA could have assumed "NB" meant "no bid" instead of "name brand" since Bell in fact included in the schedule unit and extended prices for those items. Bell further contends that when submitting the offer it told the contracting officer that the prices for items 1009 and 1010, for which the schedule did not provide a place to insert prices, were included in the prices for the other items.

In our view, GSA should not have rejected Bell's offer. First, we think GSA's interpretation of "NB" as "no bid" for items 1007 and 1008 was unreasonable. GSA's interpretation ignores the fact that not only did Bell bid the name brand for every other item, but inserted unit and extended prices for items 1007 and 1008 in the same way it did for items 1001-1006. We think it was clear from the proposal that Bell was offering the name brand for items 1007 and 1008 at the prices specified.

Concerning Bell's failure to include model numbers for line items 1001-1006, and a manufacturer's name or model number for line items 1004, 1007 and 1008, paragraph C.9(b) of the RFP provided: "Unless the bidder clearly indicates in his bid that he is offering an 'equal' product, his bid shall be considered as offering a brand name product referenced in the solicitation." Bell in no way indicated it was offering an equal item for any of the eight line items and Bell, by its insertion of a price, clearly indicated its intent to submit an offer for each one. Consequently, we find that in accordance with paragraph C.9(b) it was incumbent upon GSA to evaluate Bell's proposal on the basis of brand name and model numbers specified in the RFP. Bell's failure to include model numbers or, for items 1004, 1007 and 1008, manufacturer's names, thus was not a proper basis for GSA to reject the firm's proposal.

GSA also asserts that Bell's proposal is unacceptable because Bell did not address line items 1009 and 1010. Line

item 1009, and paragraph C.8 of the RFP, advised offerors that they must supply all manuals that normally would accompany the offered equipment, and the associated charge, if any. Line item 1009 also required the offeror to submit, with its proposal, a list of all manuals that will be provided "(and price, if any)." Paragraph C.8 further specified "any cost to the government for these materials" should be entered in the offer. Since the line item thus did not require a price, and the solicitation specifically recognized that offerors might choose to supply the manuals at no cost to the government, Bell's failure to include a price for line item 1009 should not have been deemed fatal to the offer. Nor do we believe that Bell's proposal should have been rejected because Bell did not submit a list of the manuals that would be supplied, since there is no indication in the RFP that this list was needed to evaluate proposals and, pursuant to line item 1009 and paragraph C.8, the successful offeror would be required to provide the manuals in any event.

Line item 1010 was for the cost of cabling for the networks, and was listed as an optional item. Offerors were instructed to respond to this line item in accordance with paragraph C.1.5, which provided that for the purpose of the cost evaluation offerors should prepare their bids for cabling based on the installation in a 600 square foot room of a typical network comprised of five work stations separated from each other by 15 feet. Offerors were advised to bid the cable cost per foot and the cost for a typical network, and to multiply the network total by 19 to obtain the total cost for all required networks.

Initially, it is unclear whether offerors were, in fact, required to propose a cost for cable. Paragraph M.2.2, "Evaluation of Prices," did state that "optional features, if any, will . . . be evaluated," and paragraph C.1.5 appears to have required the offeror to propose a cost for cabling. However, paragraph L.2.2., "Response to System Requirements," stated that offerors were not required to furnish "evaluated optional features," and continued:

"If possible, however, the offeror should provide the features at a price less than the associated dollar value figure listed in the Solicitation Document--because that dollar value figure represents the assessment which shall be levied against the proposal during evaluation, if the feature is not offered."

Also, paragraph M.1, "Evaluation of Proposals," stated that, in evaluating a proposal's cost to the government, an assessment will be made for the evaluated optional features which an offeror did not satisfactorily propose. We have reviewed the solicitation documents and we have not found an assessment cost for line item 1010. Our reading of these provisions leads us to conclude that offerors could reasonably interpret these provisions as not requiring them to propose a cost for line item 1010.

Moreover, we find that even if offerors were required to submit a cost for line item 1010, Bell's proposal should not have been rejected without GSA's giving Bell the opportunity to enter discussions and submit a revised proposal.

GSA asserts that award of the contract on the basis of initial proposals was proper because, pursuant to the Federal Acquisition Regulation, 48 C.F.R. § 52.15-016 (1984), the solicitation advised offerors of this possibility, and because there had been adequate competition to demonstrate that award would result in a fair and reasonable price; GSA cites our decision in D.K. Associates, Inc., B-213417, Apr. 9, 1984, 84-1 C.P.D. ¶ 396, as supporting award in those circumstances. That exception to the general requirement for discussions in a negotiated procurement no longer applies, however. Rather, under the Competition in Contracting Act of 1984, 41 U.S.C.A. § 303B(d)(1)(B) (West Supp. 1985), a contracting agency may make an award on the basis of initial proposals, where the solicitation advises offerors of that possibility, only if the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. See Boston Intertech Group, Ltd., B-220045, Dec. 13, 1985, 85-2 C.P.D. ¶ 657.

The report GSA has furnished our Office shows that the award was for all equipment and optional items (cabling and maintenance) to an offeror that proposed to supply the equipment (line items 1001-1010) for \$546,141, maintenance at \$75 per hour, and cabling at \$222 per network. Bell offered to supply the equipment for \$526,015, and maintenance at \$35 per hour. Thus, without maintenance the difference between the awardee's cost proposal, which includes the cost of cable, and Bell's cost proposal, which we will assume does not include the cost of cable, is approximately \$20,000. Our review also shows that other offerors proposed

to supply cable for an average of \$250 per network, so that adding the probable cost of cabling 19 networks to Bell's offer still leaves the cost of contracting with Bell below the award price. Given our view that GSA unreasonably found Bell's proposal otherwise unacceptable, we believe that under CICA the agency should have either awarded a contract to Bell or, if GSA needed to get a cabling price from the firm, opened discussions with Bell and other offerors, and requested best and final offers, to determine which offeror would perform at the lowest overall cost to the government.

Bell also protests that it did not receive a complete solicitation package, asserting that pursuant to a Freedom of Information Act request filed after its offer was rejected it received more solicitation documents than it had been furnished originally. GSA responds that although a better RFP package could have been prepared, the material furnished Bell initially was sufficient for the firm to prepare an offer. Because of our conclusion above, it is not necessary to address this protest issue.

The protest is sustained. By separate letter, we are recommending that GSA either terminate the awarded contract and award one to Bell, if otherwise appropriate, or enter into discussions under the RFP, to include Bell. If best and final offers show that a firm other than the awardee is entitled to the contract, GSA should terminate the awarded contract and award a new one. If the current awardee submits the best proposal, and the price is different than the contract price, the contract should be modified accordingly. See Datapoint Corp., B-186979, May 18, 1977, 77-1 C.P.D. ¶ 348.



Acting Comptroller General
of the United States